

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOSEPH SHORTAL; JOHN
STAMATIS; PAUL BARDEN;
KENNETH VAUGHAN; MICHAEL
SIMON,

Plaintiffs,

vs.

HESSGEN, INC.; BRIAN HESS;
ANDY MILLS; DOES 1-10, inclusive,

Defendants.

HESSGEN, INC.; BRIAN HESS,

Cross Claimants,

vs.

JACK MOTT; ANDY MILLS; ROES 1-
10, inclusive,

Cross Defendants.

ANDY MILLS,

Cross Claimant,

vs.

GEORGE MALASEK; DAVID
RUTKOSKE; BRIAN HESS;
HESSGEN, INC.; JACK MOTT,

Cross Defendants.

HAYES, Judge:

The matter before the Court is the Motion for Entry of Default on the Complaint Against Defendants Hessgen, Inc. and Brian Hess filed by Plaintiffs Joseph Shortal, John Stamatis, Paul Barden, Kenneth Vaughan, and Michael Simon. (ECF No. 53).

Federal Rule of Civil Procedure 55(a) provides that, “when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Plaintiffs have directed their request for entry of default to the Court, instead of the

1 Clerk. “Normally, the clerk of the court will enter default without any action being
 2 taken by the court.” *In re Bradford*, No. C 12-5999 SBA, 2013 WL 2443259, at *2
 3 (N.D. Cal. June 4, 2013) (citing Fed. R. Civ. P. 55(a)). “However, a default may also
 4 be entered by a court.” *Id.* (citing *See In re Burchell Enterprises, Inc.*, No. 04-
 5 5193SBA, 2005 WL 1154302, at *1 (N.D. Cal. May 16, 2005)).

6 On June 20, 2013, the Court issued an Order permitting counsel for Defendants
 7 Hessgen, Inc. and Brian Hess to withdraw. (ECF No. 41 at 4). The Court ordered that
 8 Brian Hess shall “notify the Court as to whether he will proceed *pro se* or retain new
 9 counsel” within 60 days of the date of the Order. *Id.* The Order notified Defendant
 10 Hessgen, Inc. that it had 60 days to obtain new counsel and have counsel file a notice
 11 of appearance. The Order warned that “if [Hessgen, Inc.] fails to obtain new counsel
 12 and have counsel file a notice of appearance, it may be subject to default proceedings.”
 13 *Id.* (citing *United States v. High Country Broad.*, 3 F.3d 1244, 1245 (9th Cir. 1993)).

14 **I. Defendant Brian Hess**

15 Defendant Brian Hess has not notified the Court as to whether he will proceed
 16 *pro se* or retain new counsel. Within **sixty (60) days of the date of this Order**, Brian
 17 Hess shall notify the Court as to why he did not comply with the Court’s June 20, 2013
 18 Order, and as to whether he will proceed *pro se* or retain new counsel. If Brian Hess
 19 fails to notify the Court within **sixty (60) days of the date of this Order**, he may be
 20 subject to default proceedings.

21 **II. Defendant Hessgen, Inc.**

22 Defendant Hessgen, Inc. has not had new counsel file a notice of appearance.
 23 The Court finds that Defendant Hessgen Inc.’s failure to retain new counsel in violation
 24 of the Court’s June 20, 2013 Order justifies entry of default under Rule 55(a). By
 25 failing to maintain representation by counsel, Defendant has failed to “otherwise
 26 defend” in this action. *See Hawkins v. AMA Mgmt, Ltd.*, No. C06-847P, 2007 WL
 27 869955 at *2-3 (March 20, 2007) (ordering that “default be entered against [d]efendant
 28 ... for failure to retain counsel after withdrawal of its counsel of record” as failure to

1 “otherwise defend” under Rule 55(a)); *see also Empl. Painters’ Trust v. Ethan Enters.,*
2 *Inc.*, 480 F.3d 993, 998 (9th Cir. 2007) (“[W]e have recognized default as a permissible
3 sanction for failure to comply with local rules requiring representation by counsel.”).
4 The Court **ORDERS** that default be entered against Defendant Hessgen, Inc. under
5 Rule 55(a).

6 **III. Conclusion**

7 **IT IS HEREBY ORDERED** that the Motion for Entry of Default on the
8 Complaint Against Defendants Hessgen, Inc. and Brian Hess filed by Plaintiffs Joseph
9 Shortal, John Stamatis, Paul Barden, Kenneth Vaughan, and Michael Simon (ECF No.
10 53) is **DENIED** without prejudice as to Defendant Brian Hess, and **GRANTED** as to
11 Defendant Hessgen, Inc.

12 The Clerk of Court shall serve this Order on Defendants Brian Hess and Hessgen,
13 Inc. at the below addresses, which are the addresses provided by Defendants’ former
14 counsel of record, Stacie L. Rammelsberg (*see* ECF No. 42):

15 Brian Hess
16 Hessgen, Inc.
17 5171 Santa Fe St., #I
18 San Diego, CA 92109
19 Email: brian@hessgen.com
20 Hessgen, Inc.
21 5171 Santa Fe St., #I
22 San Diego, CA 92109
23 Email: brian@hessgen.com

24 IT IS SO ORDERED.

25 DATED: October 15, 2013

26 
27 **WILLIAM Q. HAYES**
28 United States District Judge